



To: Clark Snelson, Chair, Litigation Committee
Litigation Committee Membership

From: Bruce Fort, Counsel, Multistate Tax Commission

Date: February 9, 2017

Re: **Proposal to Create Subcommittee to Advise the Litigation Committee on Amicus Briefing Requests and to Coordinate State Amicus Participation**

From time to time, the Multistate Tax Commission receives requests from state attorneys for assistance in gathering amicus support from the attorneys general offices of our member states. These requests arise in a variety of appeals involving interpretation of state statutes and model acts (e.g., UDITPA), tax administration, federalism, preemption, comity, administrative deference and similar topics which may affect multiple states. States also seek our help in recruiting authors for those amicus briefs. Some of our members have expressed concern that amicus briefs are not sought in some cases in which they could provide a broader perspective to the states' courts on matters of mutual concern to the states. The perceived under-utilization of amicus support may arise from a lack of understanding of the processes involved or a lack of an efficient mechanism for obtaining such support.¹

States also make requests for amicus support to the Commission itself in similar cases. Generally, the Commission files amicus briefs on its own behalf and does not join in state amicus briefs. The Commission's guidelines and policy considerations for accepting an invitation to file an amicus brief are described in *The Role of the Multistate Tax Commission as Amicus Curiae*, a memorandum presented to the litigation committee at our spring 2015 Litigation Committee meeting, available below:

¹ Our membership should be aware that the National Association of Attorneys General (NAAG) takes an active role in assisting state attorneys and promoting cooperation and coordination among state attorneys general in amicus matters, as well as educating state attorneys on U.S. Supreme Court practice. NAAG is an important resource in any case in which state amicus support is under consideration. Of particular importance, NAAG has contacts with decision-makers in each attorney general's office that the Commission's staff likely will not have.

Dan Schweitzer is currently the Director and Chief Counsel of NAAG's Supreme Court Advocacy Center, and plays the principal role at NAAG in circulating information to the states about amicus requests. He is also well-familiar with state taxation and federalism issues. You can reach Dan with respect to amicus matters at (202) 326-6010 or dschweitzer@naag.org. See generally http://www.naag.org/naag/about_naag/center-supreme-court.php.

<http://www.mtc.gov/getattachment/Litigation/Litigation-Committee-Agenda-7-2015/Report-to-Lit-Com-on-Amicus-Briefs-March-2015.pdf.aspx>.)

The litigation committee has occasionally discussed the possibility of creating an informal subcommittee of attorneys who would be interested in advising their fellow attorneys on matters of appellate tax litigation, to assist state attorneys general offices in understanding the implications of appellate cases touching on the topics identified above, and to help identify counsel who might be in a position to assist in writing amicus briefs on behalf of the states.

The purpose of this brief memo is to move our discussions forward by seeing if there is sufficient support for the concept among our members to create such a subcommittee, to solicit ideas for how the subcommittee should operate, and, if approved, to of course solicit volunteers to serve on the subcommittee. We have added this proposal as an agenda item for our upcoming meeting on March 9, 2017 in San Diego. If you have comments or suggestions about the proposal, please feel free to contact Clark Snelson, our committee chair, Csnelson@Utah.gov or contact the Commission's legal staff. (Your comments and suggestions may be considered a matter of public record.)